

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
FCC Form 325 Data Collection	)	MB Docket No. 17-290
	)	
Modernization of Media Regulation Initiative	)	MB Docket No. 17-105

**REPLY COMMENTS OF PUBLIC KNOWLEDGE**

Public Knowledge (“PK”) files these timely reply comments to oppose elimination of Form 325. Public Knowledge agrees that the Commission has increasingly failed to make full use of the data collected through Form 325 at a time when the Commission needs to closely monitor developments in the video, voice and broadband industry. Rather than eliminate Form 325, the Commission should task the newly formed Office of Economics and Analytics to compile information from Form 325 *in combination with* other sources of data to create a more detailed picture of the video and broadband industry to inform not only the FCC, but Congress and the public at large, on the ongoing evolution of the industry.

**ARGUMENT**

Form 325 provides important information to the Commission on the nature of the broadband universe not found in other forms. Most importantly, all providers filing Form 325 must certify that the information is accurate under penalty of perjury. This makes the information collected via Form 325 far more reliable than any other source. Additionally, the information includes not merely broadband speeds, but the nature of the broadband technology deployed and

details with regard to customer premise equipment. This information, combined with a certified count of subscribers for both incumbents and any overbuilders, provides important information about the nature of the broadband market and availability of potential competitors that is more granular and detailed than otherwise available.

The failure of the Commission to make use of this information does not justify eliminating the only source of this particular information provided by cable operators under penalty of perjury. Last month, the Commission announced with great fanfare the establishment of the Office of Economics and Analytics. Digesting the information provided by Form 325, combined with other reports and information from privately available sources, will provide this new Office with necessary information to advise the Commission and ensure data driven analysis across the agency's multiple Bureaus. Utilized properly, the Form 325 information will not only supplement information provided from the other sources indicated by the Commission in the NPRM and by industry commenters, it will provide a necessary cross-check for the accuracy of proprietary information compiled by industry analysts based on voluntary disclosures from self-interested cable operators.

**I. THE COMMISSION HAS AN OBLIGATION TO INFORM CONGRESS, THE PUBLIC AND ITSELF ABOUT THE CABLE AND BROADBAND INDUSTRY.**

As a general matter, the Commission has a responsibility to keep itself informed as to developments in the industries it regulates.<sup>1</sup> This collection of data, ideally, provides the basis of public reports to Congress as well as informing the Commission when new regulations may be necessary to protect consumers and enhance competition. Congress depends on the Commission to monitor the industry to provide necessary oversight and, when appropriate, recommend new

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<sup>1</sup> See, e.g., 47 U.S.C. §§ 154(k), 162, 218, 403, 1302.

legislation. Because information from proprietary sources is both extremely expensive and subject to restrictive licensing terms, members of the press and the public must depend on the FCC's reports to follow the development of competition in both the video and broadband markets. Yet instead of making use of the information the Commission already collects, the Commission instead proposes to eliminate the collection of the very information it needs to fulfill these responsibilities.

Contrary to the statements of industry commenters, the Commission does not collect information only when needed for specific rulemakings. Nor are comments filed subject to a certification of accuracy, subject to penalty of perjury. Regulatory filings made in response to specific questions are free to cherry pick industry sources, use estimates, and provide analysis specifically structured to support the advocacy position of the filer. While this approach is acceptable in the context of adversarial proceedings, it cannot replace the accuracy of annual reports filed by cable operators subject to the obligation to report critical information with specificity.

Furthermore, the Commission and the industry commenters fail to appreciate the value of accumulating standardized information over time, capable of year-over-year comparisons to determine industry trends. The information collected pursuant to Form 325 allows the Commission to compare with accuracy trends in deployment of DSL, hybrid-fiber-coax, and fiber-to-the-home by both incumbents and overbuilders. To compile even remotely similar information, the Commission would need to expand the questions on the Form 477 to collect more detailed information and/or invest considerable resources to sift through expensive proprietary data provided by private reporting services -- subject to restrictions on disclosure and use by the agency.

As the Commission determined in 1999, the sources identified by the NPRM and by industry commenters cannot substitute for detailed information provided by the cable operators themselves, certified as accurate under penalty of perjury.<sup>2</sup> That determination remains sound.

## **II. FORM 325 SHOULD NOT BE ELIMINATED BECAUSE IT PROVIDES THE PUBLIC AND POLICYMAKERS WITH IMPORTANT DATA ON THE CABLE INDUSTRY, SUCH AS EQUIPMENT LIKE SET-TOP BOXES**

The cable industry claims much of its data is proprietary as part of an explanation as to why so little of it is publicly and freely available. But this is all the more reason the FCC should require broader and more thorough disclosures: the public's interest in accessing this data, and the need of policymakers to have access to accurate and freely-available data about cable services, outweighs any private interest on the part of cable companies in keeping data confidential.

The parties commenting in favor of eliminating Form 325 further argue that data is available elsewhere, from private, commercial firms.<sup>3</sup> However, this data is typically based on outside analysis by private research firms, and in addition to being possibly less accurate than data available to companies themselves, is typically found only behind expensive paywalls. Even parties who can afford to access expensive Wall Street analyst reports can be limited in their ability to cite such data publicly (as this would obviously undermine its value to the research firms). Neither the FCC nor Congress can properly enact policies for the cable industry if the data they need are either unavailable or unavailable for public citation. If the Commission

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<sup>2</sup> See, FCC, 1998 Biennial Regulatory Review -- "Annual Report of Cable Television Systems," Form 325, Filed Pursuant to Section 76.403 Of The Commission's Rules, Report and Order, 14 FCC Rcd 4720, 4727-8 (1999), [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-99-13A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-99-13A1.pdf).

<sup>3</sup> See American Cable Association (ACA) Comments, MB Docket Nos. 17-290 and 17-105, at 5 (Feb. 12, 2018) (ACA Comments); see also The Internet & Television Association (NCTA) Comments, MB Docket Nos. 17-290 and 17-105, at 6 (Feb. 12, 2018) (NCTA Comments); Verizon Comments, MB Docket Nos. 17-290 and 17-105, at 4 (Feb. 12, 2018) (referring to private firms, such as SNL Kagan, S&P Global Market Intelligence, and Nielson).

eliminates Form 325, the cost prohibitive nature of accessing what should be public information from firms like SNL Kagan will be a major impediment and prevent public accountability of cable industry practices. An agency so committed to transparency should not take steps that have the effect of concealing important information from the public.

The Commission also recently created the Office of Economics and Analytics.<sup>4</sup> This office may find these data useful in its work in providing the Commission and the public with quantitative analysis and data-driven policies and best practices. For example, consumers are currently unable to attach devices of their choosing to cable networks, but instead are required to rent set-top boxes from their provider if they want to access a complete range of cable services. The Commission remains obligated by Congress to promote the competitive availability of navigation devices that can be used as an alternative to first-party equipment.<sup>5</sup> More granular information about the true cost and capabilities of these devices could help the Commission quantify the costs to consumers of its inaction in this area, including both what consumers pay, and the relative inferiority of the devices they are required to use. This information would be of interest not only to the Commission, but to members of Congress, journalists, and private advocates.

Broadly, in some areas it may be true that the current Commission does not make full use of the data it does collect. In the first place, of course, this data should be available to others to use, if the Commission chooses not to make use of the tools at its disposal. But more broadly, it would be odd to take the Commission's own shortcomings to mean that somehow it needs to further hamstring its ability to conduct informed policymaking. Instead, it indicates that the quality of data the Commission collects should improve. Consistent with its Congressional

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<sup>4</sup> *Establishment of the Office of Economics and Analytics*, MD Docket No. 18-3, Order, FCC 18-7 (MD Jan. 2018).

<sup>5</sup> 47 U.S.C. § 549.

directive, the best way for the Commission to ensure that it has sufficient data is to require that providers disclose it. The Commission, unlike third-party research firms, has the power to compel the disclosure of the information it needs, and it should use it.

### **CONCLUSION**

To paraphrase Shakespeare's *Julius Caesar*, the fault is not in the Form 325, but in the FCC, that it fails to utilize the data collected to fulfill its statutory obligations. Rather than eliminate Form 325, the Commission should instead focus on how best to utilize this important and detailed data set that should be informing the Commission's decisions, and reported out on a regular basis to Congress and the general public.

Respectfully submitted,

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